IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2411 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHULNATH @ KALU S/O BHERUNATH KERANGNATH BAWA

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR KT DAVE, AGP, for respondents.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/05/2000

ORAL JUDGEMENT

1. District Magistrate, Banaskantha, at Palanpur, passed an order on September 4, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Dhulnath alias Kalu, son of Bherunath Kerangnath Bawa of district Udepur, Rajasthan, under the provisions of the said Act.

2. The detaining authority considered three offences registered against the detenu. The authority also considered statements of three anonymous witnesses. The detaining authority exercised powers under Section 9(2) of the PASA Act of claiming privilege of not disclosing identity of the witnesses in public interest and, ultimately, came to a conclusion that the detenu is a bootlegger and his activities are required to be prevented as they are found to be detrimental to public order. The authority also observed that it is not possible to resort to less drastic remedies.

3. The detenu, by this petition, challenges the order of detention on various counts. However, Ms. Kachhavah, learned advocate appearing for the petitioner, has restricted her arguments on the ground of delay in forwarding the representation by the detaining authority. She submitted that the detenu made a representation on March 16, 2000 to the detaining authority as well as to the State Government. The said communication was received by the detaining authority on March 23, 2000 and the detaining authority forwarded the same to the State Government on April 20, 2000. She submitted that, as such, the detaining authority was required only to forward the representation as the detention order was already approved by the Government. This lapse of 27 days in forwarding the representation has resulted into denial of right of making an effective representation. The continued detention would, therefore, be rendered illegal and on that ground, the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He does not dispute the factual part of the date of representation, receipt of representation and forwarding of representation by the detaining authority.

5. Considering rival side contentions, it appears that the detaining authority was conscious of the fact that it has not to consider the representation on merits as the order of detention was already approved by the State Government and it was only required to forward the same. For forwarding the representation, the detaining authority has consumed 27 days, which has remained unexplained, as no affidavit in reply is filed by the detaining authority. This delay in forwarding the representation has infringed the right of the detenu of making an effective representation and can be said to be sufficient to vitiate continued detention. In this regard, decision in the case of Harish Pahwa v. State of U.P., A.I.R. 1981 SC 1126 can be profitably be

considered. In view of this legal position, the petition deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated September 4, 1999, passed against the detenu is hereby quashed. The detenu-Dhulnath alias Kalu, son of Bherunath Kerangnath Bawa is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

gt